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HUMAN RIGHTS COMMITTEE
Seventieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Argentina

1. The Committee examined the third periodic report of Argentina (CCPR/C/ARG/98/3) at its 1883rd and 1884th meetings (CCPR/C/SR.1883 and 1884) held on 25 and 26 October 2000. At its 1893rd meeting (CCPR/C/SR.1893), on 1 November 2000, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the frank and constructive explanation given by the delegation of measures undertaken by the State party since the presentation of its second periodic report to ensure respect for the rights guaranteed by the Covenant. It also appreciates the additional information provided orally by the delegation during the examination of the report and in response to members' questions.

3. The Committee observes that the federal system of government in the State party entails provincial involvement in the implementation of many of the rights provided for in the Covenant, and that it therefore requires additional information on the laws and measures undertaken at the provincial level in order to assess progress in ensuring Covenant rights, in accordance with article 50 of the Covenant.

B. Positive aspects

4. The Committee welcomes the consolidation of democratic processes and measures taken to promote national reconciliation following the years of military rule when many basic human rights were flagrantly violated. In this regard, the Committee notes with satisfaction the operation of a number of institutions and programmes designed to serve as a channel of redress for victims of past abuses, including the Historical Reparation Programme, the National Commission on the Disappearance of Persons and the National Commission for the Right to an Identity. The Committee also appreciates the efforts being made to provide financial and other compensation to victims of arbitrary detention and the families of persons who died or disappeared under the military regime.

5. The Committee welcomes recent developments in which some of those responsible for the most serious violations of human rights, including forced disappearances, torture and removal of children from their parents for purposes of illegal adoption or trafficking, are being brought to trial. It particularly welcomes the establishment of a mechanism, without time restriction on its activities, to restore the identities of children who were forcibly removed from their families.

6. The Committee is pleased to note the recent reforms enacted to promote the independence of the judiciary, particularly the creation of a competitive selection process for judges.

7. The Committee also notes with satisfaction the advances made in the protection of the rights of the indigenous peoples, the devolution of national and provincial land to indigenous communities through the National Registry of Indigenous Communities, and the promotion of multicultural and multilingual education.

C. Principal subjects of concern and recommendations

8. The Committee is concerned at the continuing uncertainty over the status of Covenant rights in national law. Despite assurances that the Covenant has constitutional status and is therefore directly invocable in courts, the Committee notes that it has been further described by the State party as being applied in a manner which is "complementary" to the Constitution, without further precision concerning that term. It also notes that the federal system of government confers upon the provinces responsibilities in critical areas, such as the administration of justice, which has resulted in uneven application of the Covenant in different areas of the State party's territory.

The Committee, recalling the responsibility of the State party itself with regard to the implementation of obligations under the Covenant, recommends that the status of Covenant rights be clarified in the fourth periodic report, including any specific examples of cases where Covenant rights have been invoked in the courts. The next report should also contain information on the legal and other measures taken to implement the Covenant at the provincial level to ensure that all persons are able to enjoy their rights throughout the territory of the State party.

9. Despite positive measures taken recently to overcome past injustices, including the repeal in 1998 of the Law of Due Obedience and the Punto Final Law, the Committee is concerned that many persons whose actions were covered by these laws continue to serve in the military or in public office, with some having enjoyed promotions in the ensuing years. It therefore reiterates its concern at the atmosphere of impunity for those responsible for gross human rights violations under military rule.

Gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary to bring their perpetrators to justice. The Committee recommends that rigorous efforts continue to be made in this area and that measures be taken to ensure that persons involved in gross human rights violations are removed from military or public service.

10. In light of articles 9 and 14 of the Covenant, the Committee reiterates its deep concern at the failure of the State party fully to ensure the principle of presumption of innocence in criminal proceedings. In this respect, the Committee considers it a matter of concern that the duration of pre-trial detention is determined by reference to the possible length of sentence following conviction rather than the need to bring the detainee before the courts. It stresses in this regard that the imposition of such detention should not be the norm but should be resorted to only as an exceptional measure to the extent necessary and consistent with due process of law and article 9 (3) of the Covenant. In this regard, there should not be any offences for which pre-trial detention is obligatory.

All aspects of the system of pre-trial detention, including the determination of the length of detention, should be reformed in accordance with the requirements of article 9 and the principle of presumption of innocence under article 14.

11. The Committee is deeply concerned that prison conditions fail to meet the requirements of articles 7 and 10 of the Covenant. It considers the severe overcrowding and the poor quality of basic necessities and services, including food, clothing and medical care, to be incompatible with the right to be treated with humanity and with respect for the inherent dignity of the human person to which all persons are entitled. It has been established, in addition, that there are abuses of authority by prison officials, such as torture and ill-treatment, and corruption.

While noting the plans under way to construct new prison facilities, the Committee recommends that immediate attention be paid to the need to provide adequately for the basic necessities of all persons deprived of their liberty. With respect to complaints of ill-treatment or torture, it recommends that the State party include in its next report detailed information on the number of complaints received, including the recourse procedures that are available to complainants, the outcome of complaints to date, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

12. Further, in relation to article 7 of the Covenant, the Committee regrets that questions of torture and excessive use of force by police officials were not adequately dealt with in the present report. The Committee is concerned at allegations it has received indicating that this is a widespread problem and that government mechanisms established to address it are inadequate.

The Committee recommends that the State party include in its next report detailed information on the number of complaints received of torture and ill-treatment by the police, including the recourse procedures and remedies that are available to complainants, the outcomes of such complaints, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

13. The Committee expresses concern over continuing attacks on human rights defenders, judges, complainants, representatives of human rights organizations and members of the media. In addition, persons who participate in peaceful demonstrations are reportedly subject to detention and penal action.

Attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required. The State party should provide details in its next report on the results of such investigations and the procedures involved in disciplining or punishing offenders.

14. On the issue of reproductive health rights, the Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law, inter alia when there are clear health risks for the mother or when pregnancy results from rape of mentally disabled women. The Committee also expresses concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women.

The Committee recommends that the State party take measures to give effect to the Reproductive Health and Responsible Procreation Act of July 2000, by which family planning counselling and contraceptives are to be provided, in order to grant women real alternatives. It further recommends that the laws and policies with regard to family planning be reviewed on a regular basis. Women should be given access to family planning methods and sterilization procedures; and in cases where abortion procedures may lawfully be performed, all obstacles to obtaining them should be removed. Argentine law should be amended to permit abortions in all cases of pregnancy resulting from rape.

15. With regard to article 3 of the Covenant, the Committee is concerned that despite significant advances, traditional attitudes towards women continue to exercise a negative influence on their enjoyment of Covenant rights. The Committee is particularly concerned at the high incidence of violence against women, including rape and domestic violence. Sexual harassment and other manifestations of discrimination in both the public and private sectors are

also a matter of concern. The Committee notes as well that information on these matters is not systematically maintained, that women have a low awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with.

The Committee recommends that a large-scale information campaign be undertaken to promote awareness among women of their rights and the remedies available to them. It urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms, and provided in the next periodic report.

16. The Committee reiterates its concern that the preferential treatment, including financial subsidies, accorded to the Catholic Church over other religious denominations constitutes religious discrimination under article 26 of the Covenant.

17. The Committee requests that the fourth periodic report be submitted by 31 October 2005. It also requests that appropriate disaggregated statistics on major areas of concern be provided in the report. The Committee further requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in the State party.